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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

MARIA L. AGUILAR, Plaintiff and Appellant, v. HONOLULU HOTEL OPERATING CORPORATION, Defendant and Respondent.	G040737 (Super. Ct. No. 30-2008 00104207) O P I N I O N

Appeal from an order of the Superior Court of Orange County, Geoffrey T. Glass, Judge. Affirmed.

Law Offices of Gary S. Bennett and Gary S. Bennett for Plaintiff and Appellant.

Kinkle, Rodiger & Spriggs, A. J. Pyka and Daniel J. Kolcz for Defendant and Respondent.

* * *

Plaintiff Maria L. Aguilar appeals from an order granting a motion to quash service of summons filed by defendant Honolulu Hotel Operating Corporation. She argues defendant did not provide sufficient evidence to support its motion whereas she showed jurisdiction based on defendant's operation of a Web site. In the alternative, she argues the court erred in denying her motion for a continuance to conduct discovery as to jurisdiction. We find no error and affirm.

FACTS AND PROCEDURAL HISTORY

As alleged in her complaint, plaintiff won a free trip to Hawaii in a drawing sponsored by Trend West in exchange for attending a timeshare presentation and stayed in defendant's Hawaii Polo Inn & Towers. While at the hotel she tripped and fell and subsequently filed the instant personal injury action.

Defendant moved to quash on the ground the court lacked personal jurisdiction because defendant had no contacts in California. It filed the declaration of David Carlisle, the general manager of the hotel. He stated that plaintiff's trip had been provided by Casablanca Express, a promoter of timeshares in Hawaii. Casablanca purchased a block of rooms from the hotel to house potential customers. The timeshares were not owned by or in any way connected to defendant.

Carlisle also declared that at the time of both the incident and the motion defendant was not registered to do business or doing in business in California. It did not own any property or have any employees or exclusive agents promoting the hotel in California. In fact, at the time of the incident the hotel was being substantially renovated and "was not actively marketing itself anywhere in the United States." It did not use billboards or newspapers for advertising in California, and although it had a Web site, it did not "selectively advertise" "or offer special promotions specifically to California residents."

Plaintiff filed an opposition to the motion but did not include a declaration. One of her arguments was that defendant had better resources to defend in California than she had to go to Hawaii to sue. Plaintiff additionally asserted that, based on defendant's sale of rooms to Casablanca, the latter was an ostensible agent of defendant. Thus, she continued, defendant was actively soliciting California residents through the acts of Casablanca who gave rooms at the hotel to those residents. She maintained she went to the hotel only because of defendant's contact with Casablanca, which she claimed was a California corporation.

At the hearing plaintiff also stated she was entitled to a continuance so she could conduct discovery to obtain additional evidence of jurisdiction. The only specific ground for discovery was that, although Carlisle stated the hotel had sold a block of rooms to Casablanca, he only referred to one occasion. Plaintiff argued Carlisle had not set out "all of the contacts, contractual and otherwise," defendant had in California.

The court granted the motion, ruling that plaintiff had not shown either general or specific jurisdiction. It denied the request for a continuance on the basis plaintiff had not shown discovery would likely lead to evidence of jurisdiction.

DISCUSSION

1. Introduction

A court may exercise personal jurisdiction only if the defendant has enough minimum contacts with the state so that "'"traditional notions of fair play and substantial justice"' [citations]" are not offended. (*Anglo Irish Bank Corp., PLC v. Superior Court* (2008) 165 Cal.App.4th 969, 977.) There are two types of personal jurisdiction, general and specific. General jurisdiction, that is, "jurisdiction on any cause of action," is appropriate where the "defendant . . . has substantial, continuous, and systematic contacts

with the forum state . . .” that do not have to be specifically related to the cause of action being asserted. (*Id*. at p. 978.)

“A court may exercise specific jurisdiction over a nonresident defendant only if: (1) ‘the defendant has purposefully availed himself or herself of forum benefits’ [citation]; (2) ‘the “controversy is related to or ‘arises out of’ [the] defendant’s contacts with the forum”’ [citations]; and (3) ‘“the assertion of personal jurisdiction would comport with ‘fair play and substantial justice’”’ [citations].” (*Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 269.)

“Where the evidence of jurisdictional facts is not in conflict, we independently review the trial court’s decision. [Citation.] To the extent there are conflicts in the evidence, we must resolve them in favor of the prevailing party and the trial court’s order. [Citation.]” (*Malone v. Equitas Reinsurance Ltd.* (2000) 84 Cal.App.4th 1430, 1436.) The only evidence in the record is the declaration of Carlisle and thus we review the motion de novo.

2. Sufficiency of the Evidence

Plaintiff claims defendant did not have enough evidence to support her motion to quash but instead actually showed enough minimum contacts with this state to validate jurisdiction. But even though defendant filed the motion, plaintiff must show there are minimum contacts. “When a defendant moves the trial court to quash service of summons for lack of personal jurisdiction, the plaintiff has the initial burden of proving that sufficient contacts exist between the defendant and California to justify the exercise of personal jurisdiction. [Citation.] If that burden is met, the burden shifts to the defendant to demonstrate that the assumption of jurisdiction would be unreasonable. [Citation.]” (*Malone v. Equitas Reinsurance Ltd., supra,* 84 Cal.App.4th at pp. 1435-1436.)

Although not completely clear, it appears plaintiff is not asserting general jurisdiction. If she is, she fails because nothing in the record shows defendant has substantial, systematic, and continuous contacts with California.

As to specific jurisdiction plaintiff maintains that defendant actively markets itself in California and attempts to support this with the assertion that at the time she filed the complaint up until the motion to quash was filed defendant had an interactive Web site. She cites cases that deal with whether such a Web site is sufficient to establish a defendant has purposefully availed itself of the benefits of the state. But this argument is problematic.

Because plaintiff did not file a declaration, the only evidence is Carlisle's declaration stating defendant had a Web site. Nothing supports the claim it was "interactive" or what plaintiff means by that term in the factual context of this case.

Some cases do provide that an interactive Web site can suffice to show purposeful availment. For example, in *Snowney v. Harrah's Entertainment, Inc.* (2005) 35 Cal.4th 1054, plaintiff, a California resident, sued several Nevada hotels for failing to disclose a surcharge. The hotels did not conduct any business or have any employees or bank accounts in this state. But they engaged in substantial advertising in California and also each maintained a Web site on which it provided room rates and that allowed potential patrons to make reservations. The court held that, based in part on the Web site, there were sufficient contacts for California to exercise personal jurisdiction. (*Id*. at p. 1059.)

It started by looking at "the sliding scale analysis described in *Zippo Mfg. Co. v. Zippo Dot Com, Inc.* (W.D.Pa. 1997) 952 F.Supp. 1119 [quoted with approval in (*Pavlovich v. Superior Court, supra,* 29 Cal.4th at p. 274]. 'At one end of the spectrum are situations where a defendant clearly does business over the Internet. If the defendant enters into contracts with residents of a foreign jurisdiction that involve the knowing and repeated transmission of computer files over the Internet, personal jurisdiction is proper.

[Citation.] At the opposite end are situations where a defendant has simply posted information on an Internet Web site which is accessible to users in foreign jurisdictions. A passive Web site that does little more than make information available to those who are interested in it is not grounds for the exercise [of] personal jurisdiction. [Citation.] The middle ground is occupied by interactive Web sites where a user can exchange information with the host computer. In these cases, the exercise of jurisdiction is determined by examining the level of interactivity and commercial nature of the exchange of information that occurs on the Web site.' [Citation.]" (*Snowney v. Harrah's Entertainment, Inc., supra,* 35 Cal.4th at p. 1063.)

The court found the defendants' Web sites fell within the middle of the spectrum but comprised sufficient availment because they "quote[d] room rates[,] . . . permit[ted] visitors to make reservations" (*Snowney v. Harrah's Entertainment, Inc., supra,* 35 Cal.4th at p. 1063), "tout[ed] the proximity of their hotels to California[,] and provid[ed] driving directions . . .[, thereby] "specifically target[ing] residents of California[citation]" (*id.* at p. 1065).

Plaintiff apparently would have us believe the facts in the present case are comparable, but, without evidence, we cannot come to that conclusion. The mere fact defendant had a Web site is not enough. Plaintiff's challenge to the statements in Carlisle's declaration that defendant did not target advertising or offer special packages to residents of California fails. Again, there is nothing to the contrary in the record, and thus in the context of this case it makes no difference whether or not defendant needed to be targeting California residents.

Likewise, we reject plaintiff's reliance on the statement in Carlisle's declaration that defendant sold blocks of rooms to Casablanca. She characterizes this as "an admission that [d]efendant[was] marketing [itself] to California residents" based on her conclusion Casablanca "was presumably using the rooms to market to California residents . . . ." Other than the actual fact of sale of rooms, the rest of this is pure

speculation. In sum, plaintiff did not show defendant purposefully availed itself of the benefits of doing business in California and thus there is no basis for specific jurisdiction.

3. Request for Continuance

Plaintiff asserts the court erred in denying her request for a continuance to conduct discovery to obtain evidence supporting jurisdiction over defendant. We disagree.

Generally a plaintiff may conduct discovery as to jurisdiction before the court rules on a motion to quash. (*Goehring v. Superior Court* (1998) 62 Cal.App.4th 894, 911.) But the grant or denial of a motion to continue for purposes of engaging in discovery is within the trial court's discretion. (*Ibid*.) "[T]o prevail on a motion for a continuance for jurisdictional discovery, the plaintiff should demonstrate that discovery is likely to lead to the production of evidence of facts establishing jurisdiction. [Citation.]" (*In re Automobile Antitrust Cases I and II* (2005) 135 Cal.App.4th 100, 127.)

As the trial court found and as the record reveals plaintiff did not do that here. In her opposition to the motion plaintiff did not request a continuance or even mention discovery. At the hearing on the motion, other than asserting her right to discovery the only thing plaintiff argued in this regard was that Carlisle had failed to set out in his declaration all of defendant's California contacts and a claim of ostensible agency.

This is comparable to *Beckman v. Thompson* (1992) 4 Cal.App.4th 481, which held the denial of a continuance for discovery was not error because the plaintiff "did not suggest that discovery was likely to produce evidence of additional California contacts by [the defendant] relating to this transaction. He only suggested a desire to find out if [the defendant] was engaged in 'substantial lending activities in California.'" (*Id.* at pp. 486-487.)

Similarly, in *Thomson v. Anderson* (2003) 113 Cal.App.4th 258, which held denial of discovery was not an abuse of discretion, the first mention of discovery was at the hearing on the motion to quash where counsel stated she would like to "be allowed to do a little bit of discovery because just recently I've come across some things . . . which indicate . . ." there is evidence of jurisdiction. (*Id*. at p. 271.) There was no explanation of the type of desired discovery or the anticipated outcome.

Likewise, here, plaintiff did nothing more than suggest a hope she could procure some factual basis for jurisdiction. It was entirely within the court's discretion to deny a continuance for purposes of discovery when nothing was presented other than speculation and surmise.

DISPOSITION

The order is affirmed. Respondent is entitled to costs on appeal.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

BEDSWORTH, J.

FYBEL, J.